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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
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Implementation of the )  
Telecommunications Act of 1996 )  
 )  
Accounting Safeguards Under the )  
Telecommunications Act of 1996 )  
 )

CC Docket No. 96-150

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To: The Commission

COMMENTS OF PUERTO RICO TELEPHONE COMPANY

The Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules,<sup>1</sup> hereby submits its Comments on the Commission's Notice of Proposed Rulemaking (NPRM) in the captioned proceeding.<sup>2</sup>

I. SUMMARY<sup>3</sup>

In the NPRM, the Commission requests comment on implementation of the accounting safeguards provisions of Sections 260 and 271 through 276 of the Telecommunications Act of 1996.<sup>4</sup> The safeguards have two principal goals: (1) to protect subscribers of regulated services against subsidizing local

1. 47 C.F.R. § 1.415.
2. FCC 96-309, NPRM released July 18, 1996.
3. A summary is required with all comments. NPRM ¶ 131.
4. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act") to be codified at 47 U.S.C. §§ 151 et seq. (Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it will be codified in the United States Code.)

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exchange carriers' (LECs') entry into, or continued participation in, competitive services; and (2) to promote competition in new markets by preventing incumbent LECs from using their existing market power in local exchange services to obtain an unfair advantage in those new markets.

PRTC concurs in the Commission's tentative conclusion that its existing cost allocation and affiliate transaction rules will best meet the statutory requirements of Sections 260 and 271 through 276 of the 1996 Act. Any possible benefit of changes in the Commissions' Part 32 and Part 64 rules would be outweighed by the administrative and financial costs such changes would entail. The Commission should consider carefully the relationship of its proposal to reclassify payphone services as nonregulated for Title II accounting purposes with respect to fair and equitable funding of Section 276(a)(2) public interest payphones.

**II. THE COST ALLOCATION RULES HAVE SERVED THE  
PUBLIC INTEREST WELL AND SHOULD NOT BE AMENDED**

PRTC agrees with the Commission that its existing Part 64 cost allocation rules fulfill the 1996 Act's requirement that unregulated services not be subsidized by regulated services. See NPRM ¶ 27. There is no need for the Commission to modify its cost allocation rules. First and foremost, actual and potential competitive entry into the local exchange and exchange access markets will ensure that local exchange carriers do not shift the cost of unregulated services to subscribers of regulated services.

Second, any change to the cost allocation rules would require LECs to make expensive and time-consuming modifications to their cost accounting systems, at a time when they must devote their energies to implementing the Commission's new interconnection requirements. See NPRM ¶ 28 (noting that new cost allocation rules could "impose substantial administrative and financial costs on the carriers"). In many cases, the same corporate personnel that are implementing the Commission's new interconnection requirements also would have to modify their companies' accounting systems to accommodate new cost allocation rules.

PRTC concurs with the Commission's conclusion that Section 260 allows non-BOC LECs to provide telemessaging service on an integrated basis. NPRM ¶ 33. It would be contrary to Congress' intent to create "a pro-competitive, de-regulatory national [telecommunications] policy framework"<sup>5</sup> if the Commission were to impose a separate affiliate requirement for telemessaging services where Congress declined to do so.

### **III. THE AFFILIATE TRANSACTION RULES HAVE SERVED THE PUBLIC INTEREST WELL AND SHOULD NOT BE AMENDED**

The Commission's existing affiliate transactions rules (see 47 C.F.R. § 32.27) satisfy the 1996 Act's requirement of safeguards to ensure that unregulated services not be subsidized by subscribers to regulated services. See NPRM ¶ 64. The fact that a Notice of Proposed Rulemaking proposing certain changes to

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5. H.R. Rep. No. 458, 104th Cong., 2d Sess. 113 (1996).

the affiliate transactions rules<sup>6</sup> has been pending since 1993 does not favor amending those rules now. Rather, the 3-year pendency of that notice underscores that the rules are working as intended.

The Commission seeks comment on using uniform valuation methods for all affiliate transactions whether for service or asset transfers. Presently, asset transfers to affiliates are valued using, in order of precedence, (1) tariffed rates, (2) prevailing company prices, (3) net book cost, or (4) estimated fair market value. See 47 C.F.R. § 32.27(c). Service transfers to affiliates are valued using, in order of precedence (1) tariffed rates, (2) prevailing company prices, or (3) fully distributed cost. See 47 C.F.R. § 32.27(d).

The Commission proposes elimination of the prevailing price method of valuing affiliate transactions. See NPRM ¶ 82. Under this proposal, transactions from a carrier to its nonregulated affiliate would be recorded at tariffed rates, if applicable, or at the higher of fair market value or fully distributed costs; transactions from the nonregulated affiliate to the carrier would be recorded at the lower of fully distributed cost or fair market value. The Commission believes that such an approach would help ensure that affiliate transactions are conducted on an arm's length basis. See NPRM ¶ 78.

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6. Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, CC Docket No. 93-251, 8 FCC Rcd 8071 (1993).

Elimination of the prevailing price valuation method will not promote arm's length transactions for affiliate service and asset transfers. Prevailing prices are readily and easily ascertained since they are "held out to the general public in the normal course of business." Joint Cost Order, 2 FCC Rcd 1298, 1334 at ¶ 285 (1987). In the future, prevailing prices will become even more important as interconnection arrangements migrate from tariff to contract under the new regime established by Sections 251 and 252 of the Act.

Determining "fair market value" for any given asset or service transfer is administratively complex. That the Commission asks whether it should establish criteria for determining what constitutes a good faith estimate of fair market value ("FMV," NPRM ¶ 84) underscores that such an approach would be fraught with uncertainty. The use of FMV for service transfers would be especially difficult: many such transfers do not lend themselves to market valuation techniques. Moreover, since the Commission has concluded that it "should not specify the methodologies carriers must follow to estimate fair market value," (NPRM ¶ 82) a patchwork of fair market valuation methodologies is inevitable.

The existing affiliate transaction valuation hierarchy should not be upended. When tariff rates are unavailable for valuing affiliate transactions, prevailing prices should remain the first alternative valuation methodology. The Commission should not prescribe valuation at the higher of FMV or fully

distributed cost for LEC to nonregulated affiliate transactions nor mandate valuation at the lower of fully distributed cost or FMV for nonregulated affiliate to LEC transactions.

**IV. THE COMMISSION SHOULD CAREFULLY CONSIDER RECLASSIFICATION OF LEC PAYPHONE SERVICES**

The Commission asks whether it should reclassify the payphone service operations of BOCs and non-BOC LECs as nonregulated for Title II accounting purposes. NPRM ¶¶ 59-60. The Commission must consider the relationship of this proposal to its implementation of the public interest payphone provisions of the 1996 Act.<sup>7</sup> Section 276(b)(2) of the Act provides:

[T]he Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

PRTC public payphones serve as a vital link for Puerto Rico's residents to the local phone network. PRTC's 10 cent per call rate, with no time limit, has enabled individuals who otherwise do not have the means to afford residential phone service<sup>8</sup> to access emergency services, health providers, family members, employers, businesses and others. Many of these Public payphones do not recover their full costs, however, due to the 10

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7. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, NPRM released June 6, 1996 ¶¶ 76-82.

8. Nearly half of the Island's residents live below the poverty line and telephone service penetration is below 50% in some areas.

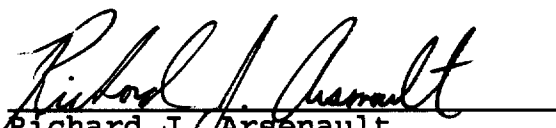
cent local coin rate and their locations in isolated and low income areas.

It is imperative that any reclassification of payphones for Title II accounting purposes not impede the Commission's ability to ensure that public interest payphones are supported fairly and equitably.

#### **VI. CONCLUSION**

The Commission's existing Part 32 and Part 64 accounting safeguards ensure that subscribers to regulated services do not bear the risk or cost of LEC nonregulated services. Those rules have worked well since their inception, satisfy the accounting safeguards requirements of Sections 260 and 270 through 276, and should not be modified herein. If the Commission reclassifies payphone services as nonregulated it must not hinder its ability to ensure equitable and fair funding for Section 276(b)(2) public interest payphones.

Respectfully submitted,

  
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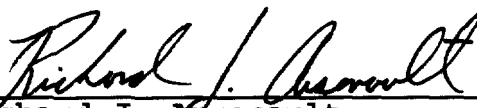
**CERTIFICATE OF SERVICE**

I, Richard J. Arsenault, hereby certify that a copy of the foregoing was delivered by hand on August 26, 1996 to the following:

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